

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

R.M.S. TITANIC, INC.,
SUCCESSOR IN INTEREST TO
TITANIC VENTURES, LIMITED
PARTNERSHIP,

Plaintiff,

v.

THE WRECKED AND ABANDONED
VESSEL, ETC.,

Defendant.

CIVIL ACTION NO.
2:93cv902

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

June 21, 2016

BEFORE: THE HONORABLE REBECCA BEACH SMITH
Chief United States District Judge

APPEARANCES:

KALEO LEGAL
By: Brian A. Wainger
And
McGUIRE WOODS LLP
By: Robert W. McFarland
Counsel for R.M.S. Titanic

1 APPEARANCES CONTINUED:
2

3 UNITED STATES ATTORNEY'S OFFICE

4 By: Kent Porter

5 Assistant United States Attorney

6 Counsel for Amicus United States

7 THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

8 By: Jackie Rolleri

9 Counsel for NOAA
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1 (Hearing commenced at 11:31 a.m.)

2 THE CLERK: In case 2:93cv902, R.M.S. Titanic, Inc., 11:31:5
3 Successor in Interest to Titanic Ventures, Limited 11:32:0
4 Partnership, versus The Wrecked and Abandoned Vessel, et 11:32:0
5 cetera. 11:32:1

6 Mr. McFarland, Mr. Wainger, is the plaintiff ready 11:32:1
7 to proceed? 11:32:1

8 MR. MCFARLAND: Good morning, Your Honor. The 11:32:1
9 plaintiff is ready. 11:32:1

10 THE COURT: Good morning, counsel. 11:32:1

11 THE CLERK: Mr. Porter, Ms. Roller, is Amicus 11:32:1
12 United States of America ready to proceed? 11:32:2

13 MR. PORTER: Good morning, Your Honor. We are ready 11:32:2
14 to proceed. 11:32:2

15 THE COURT: Good morning, counsel. I believe that 11:32:2
16 we began this hearing, when it was originally scheduled, 11:32:2
17 Mr. McFarland, to catch up on the various status reports that 11:32:3
18 you have filed, your most recent one, and then there was one 11:32:3
19 received in April and another in February, and so I believe 11:32:4
20 you've got some catch-up to do with the status reports. 11:32:5

21 You filed one on November 4, 2015, February 23rd, 11:33:0
22 2016, and then April 10th, 2015. Then just recently, I 11:33:0
23 believe it was around June 15, 2016, an additional report was 11:33:1
24 received. So why don't we start the hearing with you 11:33:1
25 summarizing or going through -- I certainly reviewed the 11:33:2

1 reports -- to advise the Court, in a summary fashion, where 11:33:2
2 the status of the matter is at this juncture. 11:33:3

3 MR. MCFARLAND: Thank you, Your Honor. We 11:33:3
4 appreciate the opportunity to be before the Court today, Your 11:33:3
5 Honor, and certainly there have been a number of developments 11:33:4
6 since the first status report that Your Honor made, including 11:33:4
7 the status report that we filed last week on June 15th. 11:33:4

8 Going back to February 23rd of this year, we 11:33:5
9 submitted a confidential periodic report which outlined the 11:33:5
10 company's financial condition and status at that period in 11:34:0
11 time, as well as advising the Court on the status of the 11:34:0
12 collection and the exhibitions that were going on. 11:34:0

13 We filed a supplemental or next report in April, and 11:34:0
14 then this Court scheduled this status conference. Then since 11:34:1
15 that scheduling, the company has filed a petition for 11:34:1
16 reorganization under Chapter 11 of the U.S. Code in the 11:34:2
17 Middle District of Florida, Jacksonville Division. 11:34:2

18 To fully inform the Court about that Chapter 11 11:34:3
19 proceeding and filing, we filed a supplemental periodic 11:34:3
20 report on June 15th last week, Your Honor. We then filed, 11:34:3
21 that same day, a suggestion in bankruptcy in this court on 11:34:4
22 June 15th, 2016, under 11 U.S.C. 362, which we believe 11:34:4
23 provides an automatic stay of all litigation/judicial 11:34:5
24 proceedings. 11:34:5

25 THE COURT: Well, I don't agree with you on that in 11:34:5

1 regard to this proceeding, but we'll get to that. It does 11:35:0
2 not stay this proceeding, and I will tell you the legal 11:35:0
3 reasons why. 11:35:0

4 MR. MCFARLAND: Very well, Your Honor. It is the 11:35:0
5 Titanic's position that pursuant to the Chapter 11 11:35:1
6 reorganization filing that there is an automatic stay of all 11:35:1
7 judicial proceedings, including this one. That would apply 11:35:1
8 such that while we are certainly here to provide information 11:35:2
9 to the Court, we do not believe that any further litigation 11:35:2
10 or adversarial proceedings could go forth at this point in 11:35:3
11 time. 11:35:3

12 THE COURT: Well, adversarial proceedings are one 11:35:3
13 thing, but staying this action is another, because an 11:35:3
14 automatic stay is meant to protect debtors from judgments, 11:35:4
15 collection activities, foreclosures and repossessions against 11:35:4
16 them. It is not meant to operate in an action which they 11:35:5
17 have initiated, and that's been before the Court, and we have 11:35:5
18 our covenants and conditions. 11:35:5

19 I have the law on that, and the automatic stay does 11:36:0
20 not operate to relieve you from this salvage action in this 11:36:0
21 court and any proceedings thereon, but I'll go through the 11:36:1
22 law with you so you don't need to get to that yet. What I'm 11:36:1
23 asking you to do is to bring the Court up to date 11:36:2
24 particularly with this merger with Dinoking. Is that the way 11:36:2
25 it is pronounced? 11:36:3

1 MR. McFARLAND: Yes, Your Honor. That went through 11:36:3
2 in, I believe, late 2015. Mr. Daoping Bao is now the 11:36:3
3 Chairman and CEO of the company, and there is a board of 11:36:3
4 directors that he is head of. Other members are 11:36:4
5 Mr. Mingcheng Tao, Mr. Sid Dutchak, Mr. Rick Kraniak, Doug 11:36:5
6 Banker, who the Court may remember is a longstanding member 11:37:0
7 of the Premier Board of Directors, and Jerry Henschel. 11:37:0

8 THE COURT: It is my understanding that you have 11:37:1
9 indicated to the Court that R.M.S.T. remains the holder of 11:37:1
10 the rights on the Titanic artifacts, and although it may be a 11:37:2
11 wholly owned subsidiary of Premier, the two transactions, in 11:37:2
12 terms of the merges, did not affect the ownership of the 11:37:3
13 Titanic artifacts. That is what has been represented to the 11:37:3
14 Court. 11:37:3

15 MR. McFARLAND: Did not affect the ownership of the 11:37:4
16 artifacts, that's correct, Your Honor, absolutely. In that 11:37:4
17 sense let me say that even with the Chapter 11 filing, the 11:37:4
18 company recognizes its obligations under the covenants and 11:37:4
19 conditions and fully intends to adhere to those throughout 11:37:4
20 the Chapter 11 reorganization proceeding. 11:37:5

21 THE COURT: All right. So basically what I'm doing 11:37:5
22 is going through each report. I'm going back to the November 11:38:0
23 15, 2015 report when you first reported that R.M.S.T.'s 11:38:0
24 parent company closed on November 1, 2015, and it was a way 11:38:1
25 of surviving as an entity in the merger, and what I'm trying 11:38:2

1 to do is go back and trace for the record now where the Court 11:38:2
2 is. As I understood it from your submission, the documents 11:38:3
3 governing the transactions recognized R.M.S.T. as the sole 11:38:3
4 owner of the artifacts and warranted that R.M.S.T. is in 11:38:4
5 compliance with all of the Court's orders, and pursuant to 11:38:4
6 its terms, the promissory note was converted to Premier 11:38:4
7 common stock on October 30, 2015, thus terminating the debt 11:38:5
8 held by the investor in the group. 11:38:5

9 MR. McFARLAND: Correct, Your Honor. 11:39:0

10 THE COURT: All right. Then you had something in 11:39:0
11 that report about the corporate structure. As I understood 11:39:0
12 the structure, the primary shareholders, you had an executive 11:39:1
13 chairman of the board, a president, a chief executive 11:39:1
14 officer, and so forth. If you can go through all of those 11:39:2
15 positions and tell the Court if they are still current. 11:39:2

16 MR. McFARLAND: Certainly, Your Honor. Daoping Bao, 11:39:2
17 spelled B-a-o, pronounced Bao, is the Chairman and CEO. 11:39:3
18 Michael Little is the Chief Financial Officer. Ms. Alex 11:39:3
19 Klingelhoffer, who the Court may recall from testimony 11:39:4
20 previously, is the Vice President for collections. The board 11:39:4
21 of directors is, as I mentioned a few minutes ago, composed 11:39:5
22 of, I believe, five gentlemen. 11:39:5

23 THE COURT: Have you given those names to the Court? 11:40:0

24 MR. McFARLAND: I believe we provided the names of 11:40:0
25 the board, but we can certainly update that, Your Honor. 11:40:0

1 THE COURT: All right. As I understand, on November 11:40:0
2 5, 2015, Mr. Sellers resigned from the board of directors? 11:40:1

3 MR. McFARLAND: That is correct, Your Honor, 11:40:1
4 Mr. Sellers who had been an investor. I guess we do need to 11:40:1
5 provide Mr. Henschel, who we will update. He is a very 11:40:2
6 recent addition to the board of directors following 11:40:2
7 Mr. Evans' resignation as a director last month, I believe. 11:40:3

8 THE COURT: Then what you need to do is just file 11:40:3
9 with the Court for the record any changes in the corporate 11:40:3
10 structure in terms of who's running the company, who's on the 11:40:3
11 board, and when you file that with the Court, you need to 11:40:4
12 show, for instance, that somebody was there, and then they 11:40:4
13 resigned on such and such a date, and then whoever took their 11:40:5
14 place. So it's just a simple snapshot for the Court to have. 11:40:5

15 MR. McFARLAND: Certainly, Your Honor. I'm happy to 11:40:5
16 do that. 11:41:0

17 The company continued to operate, Your Honor, 11:41:0
18 throughout late 2015/early 2016. We have had extensive 11:41:1
19 discussions with the Government representatives of NOAA, 11:41:1
20 Department of Justice, about the company's operations, 11:41:2
21 keeping them fully informed, largely under a nondisclosure 11:41:2
22 agreement. 11:41:2

23 But as we advised the Court of the company's 11:41:3
24 financial situation going back to last year and continuing 11:41:3
25 into this year, it was not strong, largely due to a 11:41:3

1 transaction in New York City where the company entered into a 11:41:4
2 long-term lease for space on 5th Avenue between 38th and 39th 11:41:4
3 Streets that was hosting the "Saturday Night Live" 11:41:5
4 exhibition. That exhibition has not proven to be financially 11:41:5
5 successful. We have the obligations under the lease, and 11:42:0
6 those have been choking or make it difficult for the company 11:42:0
7 to operate financially. 11:42:0

8 THE COURT: This is Premier? 11:42:1

9 MR. McFARLAND: Yes, Your Honor. The lease is under 11:42:1
10 Premier's name. 11:42:1

11 THE COURT: All right. 11:42:1

12 MR. McFARLAND: The space was to hold the "Saturday 11:42:1
13 Night Live" exhibition and also Titanic exhibition. We 11:42:1
14 continued to analyze our financial situation into 2016, 11:42:2
15 looking at the picture, analyzing it carefully with the hope 11:42:2
16 of financial advisors what could be done, and very recently, 11:42:3
17 Your Honor, as we've advised the Court last week, the company 11:42:3
18 filed a Chapter 11 proceeding in Florida. The company is 11:42:4
19 incorporated in Florida, as the Court will recall, filing in 11:42:4
20 the Middle District of Florida, Jacksonville. 11:42:5

21 In keeping with that proceeding, I've advised the 11:42:5
22 Court through the supplemental periodic report. 11:43:0

23 THE COURT: One thing, before you go forward with 11:43:0
24 that, in your February periodic report you also explained 11:43:0
25 that the NASDAQ stock market had delisted Premier on February 11:43:1

1 10, 2016, and it was because the merger with DK was a change 11:43:1
2 in control, which then required the post-merger entity to 11:43:2
3 file a listing application, and Premier did not meet the 11:43:2
4 minimum required stock price, so the stock was then being 11:43:3
5 traded through an over-the-counter marketplace called OTCQB? 11:43:3
6 So is it still in the same situation? 11:43:4

7 MR. McFARLAND: It's my understanding that is 11:43:4
8 correct, Your Honor. We have not been listed again. 11:43:5

9 (Conferring with co-counsel.) 11:43:5

10 MR. McFARLAND: I'm advised, Your Honor, it's still 11:43:5
11 an Over-the-Counter Pink Sheets trading, is what the stock's 11:44:0
12 current listing is. 11:44:0

13 THE COURT: All right. You can go ahead. 11:44:0

14 MR. McFARLAND: Thank you, Your Honor. With the 11:44:1
15 filing of the Chapter 11 petition, Your Honor, it is the 11:44:1
16 company's hope that it can emerge from a Chapter 11 through a 11:44:2
17 reorganization with the ability to pay off its creditors in 11:44:2
18 full, continue to employ the folks who have been at the 11:44:3
19 company, keep the shareholders' equity stakes in the company 11:44:3
20 and also continue to preserve, what we certainly have been 11:44:4
21 doing all along, and continue to preserve and curate the 11:44:4
22 collection, both pursuant to the covenants and conditions and 11:44:4
23 our recognized efforts all along in this matter. 11:44:5

24 Yesterday, Your Honor, the Court and the Court in 11:44:5
25 Florida, we filed a motion for order seeking Court approval 11:45:0

1 of the sale of a limited number of the French artifacts. 11:45:0

2 THE COURT: My understanding that it's only the 11:45:1
3 French artifacts that are involved in this sale, and those 11:45:1
4 were excepted in the covenants and conditions that protected 11:45:1
5 the artifacts that were before this Court? 11:45:2

6 MR. McFARLAND: Yes, Your Honor, that is correct. 11:45:2
7 The French artifacts, no question they are part of the 11:45:2
8 estate, the bankruptcy estate. So we have filed there a 11:45:3
9 motion for seeking the Court's approval for a potential sale 11:45:3
10 of certain of those French artifacts, the idea being, 11:45:4
11 although we didn't come to this motion and decision lightly, 11:45:4
12 but given the company's financial circumstances, a limited 11:45:5
13 sale of certain of the French artifacts, if it were to occur, 11:45:5
14 could provide the revenue necessary for the company to pay 11:45:5
15 off its creditors, including ending its lease obligations in 11:46:0
16 New York City, provide the company working capital going 11:46:0
17 forward, and allow the shareholders to maintain their equity 11:46:1
18 stakes in the company. All the shareholders would maintain 11:46:1
19 their positions, and we would be able to operate the company 11:46:2
20 profitably, we believe, going forward coming out of the 11:46:2
21 Chapter 11 proceeding. 11:46:2

22 THE COURT: All right. Well, I would remind you, 11:46:2
23 Mr. McFarland, and anyone else involved in this bankruptcy, 11:46:3
24 that this Court's order on the covenants and conditions takes 11:46:3
25 precedent. It was entered a few years ago, and the covenants 11:46:4

1 and conditions specifically exclude the Titanic artifacts -- 11:46:4
2 I'm not talking about the French artifact collection -- from 11:46:5
3 the bankruptcy estate of the trustee, and that's your 11:46:5
4 covenant and conditions Section 7(d). They also give this 11:46:5
5 Court the right to take all appropriate action to enforce the 11:47:0
6 covenants and conditions and to hold any hearing necessary to 11:47:1
7 determine if any insolvency bond should even be forfeited and 11:47:1
8 any funds applied to protect the Titanic collection. 11:47:2

9 So I would encourage everyone to go back and read 11:47:2
10 the covenants and conditions that govern the Titanic 11:47:2
11 artifacts before this Court. That's in Section 7(d). So I 11:47:3
12 would encourage everyone to go back and read that. That is 11:47:4
13 an order that takes precedent for the Titanic artifacts, 11:47:4
14 which are before this Court. 11:47:4

15 The Fourth Circuit up to the Supreme Court have made 11:47:5
16 it clear about what the status of being a 11:47:5
17 salvor-in-possession is. This Court has made it clear about 11:48:0
18 the ownership of any assets, and the covenants and conditions 11:48:0
19 make it very clear that they are not part of the bankruptcy 11:48:0
20 estate. So if anybody is beginning to think that, they 11:48:1
21 better dissuade that notion from their paperwork and their 11:48:1
22 minds. 11:48:1

23 MR. McFARLAND: We appreciate what the Court is 11:48:2
24 saying, Your Honor, and let me say to the Court that 11:48:2
25 throughout all the proceedings going back since we have been 11:48:2

1 before this Court, the company has always recognized and 11:48:3
2 taken most seriously its obligations to preserve the 11:48:3
3 collection, curate the collection. The Court will recall the 11:48:3
4 testimony, and that has continued to be done. Even with the 11:48:4
5 financial difficulties that the company has experienced, we 11:48:4
6 have continued to maintain the collection in A1 condition. 11:48:4
7 We are working with NOAA to set up a mutually convenient time 11:48:5
8 for them to come see the collection again. We would welcome 11:48:5
9 the Court. We have asked Your Honor before, I know with your 11:48:5
10 schedule it is difficult, but we would love to have you come 11:49:0
11 to Atlanta and see the collection. 11:49:0

12 THE COURT: You need to give me some type of notice. 11:49:0
13 I don't know if I can do it, but you would need to give me 11:49:0
14 some type of notice. You obviously don't need any scheduling 11:49:1
15 pursuant to my schedule, but if you give me notice, and I'm 11:49:1
16 available and determine that it's something that should be 11:49:1
17 done in the case, I will see to your request. But you would 11:49:2
18 need to let me know well in advance. 11:49:2

19 MR. McFARLAND: Very good, Your Honor. Be happy to 11:49:3
20 set that up. In addition to taking care of the preservation 11:49:3
21 and curation of the artifacts, we have continued to fund the 11:49:3
22 reserve account. 11:49:4

23 THE COURT: That was my next question. 11:49:4

24 MR. McFARLAND: Well, I thought it might be. I 11:49:4
25 wanted to fully inform the Court. We have continued to fund 11:49:4

1 the reserve account. There is at this point in time 11:49:4
2 approximately between \$450 and \$500,000 in it, and that is 11:49:5
3 in, if I could use the term that was used, and I guess it was 11:49:5
4 the last presidential election, we consider it a lockbox, 11:49:5
5 Your Honor. It is not part of the estate, and it is secure, 11:50:0
6 and it will continue to be funded. 11:50:0

7 THE COURT: The reason I was asking, the February 11:50:1
8 23rd report indicated that you had continued to fund it, and 11:50:1
9 at that time it totaled about \$433,000, but in the most 11:50:1
10 recent report, the June 15th, 2016, there was no mention of 11:50:2
11 the reserve account and its current total. So I would 11:50:2
12 appreciate if you would, in this supplemental filing, advise 11:50:3
13 the Court, and obviously copy Mr. Porter and the United 11:50:3
14 States on anything that you file with the Court, stating the 11:50:4
15 account balance. You can either do it June 15th or July 1, 11:50:4
16 whatever date you choose, but I need some current date to 11:50:5
17 operate from since February. 11:50:5

18 MR. McFARLAND: Certainly, Your Honor. I don't have 11:51:0
19 the exact figure but it is between 450 and 500. So it's 11:51:0
20 \$500,000, so it has increased since the February report, and 11:51:0
21 we apologize for the oversight in the June report for not 11:51:1
22 including the figure but we will get that. 11:51:1

23 Your Honor mentioned informing the Government and 11:51:1
24 Mr. Porter, and we have done that throughout this, Your 11:51:2
25 Honor. 11:51:2

1 THE COURT: I know. I'm not saying you haven't. 11:51:2
2 I'm just reinforcing it for the record. 11:51:2

3 MR. McFARLAND: Right. But I wanted to advise the 11:51:3
4 Court that for the past eight months, Your Honor, give or 11:51:3
5 take -- I could be off a little bit -- but we have been 11:51:3
6 meeting with representatives of the Government and NOAA to 11:51:3
7 discuss any concerns they might have to apprise them of the 11:51:4
8 company status to work out. The Court may recall the mapping 11:51:4
9 project was discussed. We've talked with them about that, 11:51:5
10 about giving them certain access to the collection online so 11:51:5
11 that they can see for themselves the artifacts and the 11:52:0
12 conditions and the reports on them, and then also, as I said, 11:52:0
13 to have them come down and actually see the artifacts in 11:52:0
14 person. 11:52:1

15 So we have been working hand in hand with NOAA. It 11:52:1
16 isn't to say we agree on everything a hundred percent all the 11:52:1
17 time, but they have been productive meetings, and we 11:52:1
18 certainly will continue those going forward even after the 11:52:2
19 filing of the Chapter 11. 11:52:2

20 As I mentioned, Your Honor, we've had the management 11:52:2
21 change with Mr. Bao as the chairman and CEO now, and our 11:52:3
22 goal, Your Honor, is to come out of the Chapter 11 proceeding 11:52:3
23 in a financially sound condition that we think will not only 11:52:4
24 address the needs of our creditors, shareholders and 11:52:4
25 employees, but also, frankly, provide further protection for 11:52:5

1 the collection. 11:52:5

2 Our goal is to always maintain and preserve the 11:52:5
3 collection, and with the revenue that may be gained from the 11:52:5
4 limited sale from the French artifacts, we think that can be 11:53:0
5 done and to continue to preserve and curate the collection in 11:53:0
6 a stronger position. 11:53:1

7 THE COURT: All right. Anything else that you would 11:53:1
8 have to add, Mr. Wainger? 11:53:1

9 MR. WAINGER: No, Judge. Nice to see you again. 11:53:1

10 THE COURT: Let me see if Mr. Porter has anything 11:53:2
11 that he wants to add today. 11:53:2

12 MR. PORTER: Good morning, Your Honor. 11:53:2

13 THE COURT: Good morning. 11:53:2

14 MR. PORTER: Nothing really. I would reiterate what 11:53:2
15 Mr. McFarland has said. There has been communications about 11:53:3
16 continuing NOAA's oversight role. There is discussions to 11:53:3
17 set up the site visit. Some information was provided as of 11:53:3
18 yesterday with some of the information about the artifacts, 11:53:4
19 and I confirmed with Mr. Wainger just this morning that a 11:53:4
20 conversation we had about a week or so ago to get further 11:53:4
21 information is still on board, and so in terms of NOAA's 11:53:5
22 oversight role, I think we are on the right track. There is 11:53:5
23 information we still need to get, but I think we're on the 11:54:0
24 right track with that. 11:54:0

25 THE COURT: All right. There are a number of 11:54:0

1 individuals in the courtroom, and I don't know if you would 11:54:1
2 like to introduce them, Mr. McFarland, or you'd prefer that 11:54:1
3 they introduce themselves? 11:54:1

4 MR. McFARLAND: I'm happy to introduce them, Your 11:54:2
5 Honor. I apologize. I should have done that at the outset. 11:54:2

6 THE COURT: And, what their role is in this. 11:54:2

7 MR. McFARLAND: Absolutely, Your Honor. Let me say 11:54:2
8 that I can introduce the individuals on my left side. I'm 11:54:2
9 going to leave to Mr. Porter the individuals to my right. 11:54:3

10 To my immediate left, Billy Poynter, Your Honor, who 11:54:3
11 is with Kaleo Legal, Mr. Wainger's partner, and assists with 11:54:3
12 legal issues for Premier. Next, Michael Little, who is the 11:54:4
13 Chief Financial Officer for the company, Your Honor. 11:54:4

14 To Mike's left is Alex Klingelhoffer, our Vice 11:54:5
15 President of collections, who is in charge of curating and 11:54:5
16 preserving the collection. Then Tina Bingham, who is Billy 11:54:5
17 and Brian Wainger's partner, Your Honor, at Kaleo Legal and 11:55:0
18 corporate counsel for Premier. 11:55:0

19 THE COURT: All right. Thank you. Mr. Porter, if 11:55:0
20 you would like to introduce the individuals or have them 11:55:0
21 introduce themselves and counsel at the table. 11:55:1

22 MR. PORTER: I'll be happy to introduce them. This 11:55:1
23 is Jack Rolleri. She is counsel with NOAA. She has been my 11:55:1
24 primary contact since I became involved in the case about 11:55:2
25 three weeks ago or a month ago. 11:55:2

1 THE COURT: Nice to have you, Ms. Roller. 11:55:2

2 MR. PORTER: Ole Varmer, who I believe has appeared 11:55:3
3 before you before. He's also counsel with NOAA. Next to him 11:55:3
4 is Jim Delgado. He is the director of NOAA's Maritime 11:55:3
5 Heritage Program. Next to him, I believe you know 11:55:4
6 Mr. Stefan. He has been assisting me when the bankruptcy was 11:55:4
7 filed to give me some advice on that. 11:55:4

8 Next to him is Russ Craig, senior counsel, 11:55:4
9 Department of Commerce. Next to him, Alicia Rector is an 11:55:5
10 intern with NOAA this summer working with Ms. Roller. 11:55:5
11 Brittney McGail is an intern in our office, a third-year 11:56:0
12 practice at William & Mary in our office this summer. 11:56:0

13 Next to her is Mike Cannon, also with the Department 11:56:3
14 of Commerce counsel. In the last row is Dave Alberg, who is 11:56:3
15 the superintendent of the Monitor National Maritime 11:56:4
16 Sanctuary. 11:56:4

17 THE COURT: Nice to have all of you. 11:56:4

18 MR. PORTER: Thank you, Your Honor. 11:56:4

19 THE COURT: Before we adjourn today, I do want to 11:56:4
20 put on the record the Court's position in regard to any 11:56:5
21 bankruptcy that has been filed by R.M.S.T., or Premier, and I 11:56:5
22 will put that on the record so that there is no question 11:57:0
23 where the Court stands in this matter. 11:57:0

24 R.M.S.T. filed a Suggestion of Bankruptcy which, 11:57:1
25 quote, "Suggests that this action has been stayed by the 11:57:1

1 operation of 11 U.S.C. Section 362," and that's in their 11:57:1
2 Suggestion of Bankruptcy at 1. However, that particular 11:57:2
3 provision protects debtors, as I indicated earlier, from 11:57:3
4 judgments, collection activities, foreclosures or 11:57:3
5 repossessions of property on debts or claims arising before 11:57:4
6 the bankruptcy petition was filed. 11:57:4

7 In other words, it protects debtors who are or who 11:57:5
8 could be defendants in actions. Section 362 provides an 11:57:5
9 automatic stay that, "Stops actions against the debtor, not 11:58:0
10 actions originally brought by the debtor, the trustee or the 11:58:0
11 debtor-in-possession." I selected that case because the 11:58:1
12 quote is right on point. It is from *In re KTMA Acquisition* 11:58:2
13 *Corp.* It's 153 B.R. 238 at 260. It's an opinion in 1993 out 11:58:2
14 of the District of Minnesota, which is still good law 11:58:3
15 throughout the bankruptcy community. 11:58:3

16 I would also invite you to see *Overnite Transport* 11:58:3
17 *Company v. Ryder/P-I-E Nationwide, Inc.*, which is at 137 B.R. 11:58:4
18 766, 768. That's out of the Eastern District of Missouri in 11:58:4
19 1992 stating that the Eighth Circuit had not specifically 11:58:5
20 addressed the issue at that time but other circuits in all 11:59:0
21 the district courts had concluded that the automatic stay -- 11:59:0
22 there is a long line of cases -- does not apply to actions 11:59:0
23 originally commenced by the bankrupt party. So that is 11:59:1
24 important. 11:59:1

25 Moreover, a number of other district courts 11:59:1

1 traditionally retain jurisdiction to determine the 11:59:2
2 applicability of the automatic stay of a bankruptcy court to 11:59:2
3 litigation pending before them. So even at a threshold 11:59:3
4 level, this Court would have jurisdiction to even determine 11:59:3
5 whether the automatic stay had any applicability, and based 11:59:4
6 upon the law that I have reviewed, it would not have 11:59:4
7 applicability, and it's even more strengthened by, rather 11:59:5
8 than the general rules that I've just stated, by the 11:59:5
9 covenants and conditions, which I will go through in a 11:59:5
10 moment. 12:00:0

11 You have the case out of the Fifth Circuit, *Picco v.* 12:00:0
12 *Global Marine Drilling Company*, 900 F.2d 846 at 850, and 12:00:0
13 based upon the review of the law that I've read, I would 12:00:1
14 conclude that the automatic stay does not apply to this 12:00:1
15 proceeding because this is a type of proceeding that 12:00:2
16 basically was commenced by R.M.S.T. many, many years ago, to 12:00:2
17 be salvor-in-possession, and I think that R.M.S.T. recognizes 12:00:3
18 this, too, whether they want to openly admit it, because they 12:00:4
19 do state that they will continue to work with NOAA under the 12:00:4
20 framework set in the covenants and conditions. 12:00:5

21 The covenants and conditions are very specific in 12:00:5
22 how they relate to any bankruptcy proceeding because, 12:00:5
23 obviously, it was certainly on NOAA's mind and concern, and 12:01:0
24 certainly on the Court's, when you start down the road and 12:01:0
25 you don't want anyone making an end run around Court rulings 12:01:1

1 by using other proceedings and mechanisms. 12:01:1

2 The covenants and conditions, I'll just review those 12:01:2
3 very briefly. I'm not going to sit here and read all of 12:01:2
4 those to you, but the covenants and conditions contain 12:01:2
5 provisions that protect the Titanic artifact collection in 12:01:3
6 the event of the trustee's bankruptcy, and you can go back 12:01:3
7 and look at those, but in particular I'm reading from 12:01:4
8 covenant and condition VIII, Subsection B. This is the 12:01:4
9 quote: "To the extent allowed by federal law, the beneficial 12:01:5
10 interest to the Titanic artifact collection shall not be 12:01:5
11 considered as part of the bankruptcy estate of the trustee in 12:02:0
12 the event of bankruptcy, insolvency, dissolution, winding up 12:02:0
13 or similar event. Further, all measures taken by a trustee, 12:02:1
14 debtor-in-possession, or similar agent of the trustee," are 12:02:1
15 subject to review by this Court, meaning this United States 12:02:2
16 District Court for the Eastern District of Virginia. 12:02:2

17 That is, "To protect the unity and integrity of the 12:02:3
18 Titanic artifacts." The covenants and conditions then 12:02:3
19 provide specific procedures in the event of the trustee's 12:02:4
20 bankruptcy. They are found in Subsection 7(d) in the 12:02:4
21 covenants and conditions. They are, number one, this Court 12:03:0
22 may take all appropriate action within its jurisdiction to 12:03:0
23 enforce the covenants and conditions. This Court may request 12:03:1
24 information from the trustee and/or conduct a hearing to 12:03:1
25 ascertain whether the trustee's insolvency bond would be 12:03:1

1 forfeited and recommend the modalities under which the funds 12:03:2
2 will be applied to protect the Titanic collections. NOAA has 12:03:2
3 the right to make submissions in these proceedings and 12:03:3
4 represent the public interest. If another bankruptcy court 12:03:3
5 attempts to exercise jurisdiction over the Titanic artifact 12:03:3
6 collection, this district court, or that district court in 12:03:4
7 which the bankruptcy case is pending, may have the reference 12:03:4
8 withdrawn under 28 United States Code Section 157 or transfer 12:03:5
9 venue to this Court under 28 United States Code Section 1412. 12:03:5
10 That's in the covenants and conditions at Section 7(d). 12:04:0

11 So I would remind everyone of all of those covenants 12:04:0
12 and conditions upon which this Court has issued an order, and 12:04:1
13 any violation of that order would be subject to appropriate 12:04:1
14 action from this Court, and everyone, I think, knows what 12:04:2
15 that potential action would be. 12:04:2

16 As I understand it, at this juncture Mr. McFarland 12:04:3
17 can just clarify for the Court on the record that the only 12:04:3
18 artifacts that are looking to be liquidated are those which 12:04:3
19 have been referred to as the French artifacts which are not 12:04:4
20 subject to the covenants and conditions? 12:04:4

21 MR. MCFARLAND: That is correct, Your Honor. That 12:04:4
22 is correct. As the Court noted in 7(a) through (c) that was 12:04:5
23 read there, those are the conditions applying to the stack, 12:04:5
24 yes. 12:05:0

25 THE COURT: The only other matter I want to state 12:05:0

1 for the record, it is the Court's understanding, through all 12:05:0
2 of these reports, that Ms. Klingelhoffer, who has managed and 12:05:0
3 cared for the collection and has testified before the Court, 12:05:1
4 she's been managing it since October of 2008, continues to 12:05:1
5 serve as the caretaker of the artifacts, and that you 12:05:2
6 maintain the same standards of conservation, curation, 12:05:2
7 collection, and management that you have since she joined 12:05:3
8 R.M.S.T. because she's the one I think who pushed things in 12:05:3
9 the proper direction, as I recall. 12:05:4

10 MR. McFARLAND: She did, Your Honor, and we have 12:05:4
11 continued to do that. That is one of the things I wanted to 12:05:4
12 assure the Court, that that has continued throughout, since 12:05:4
13 her joining us in 2008, and even given the company's 12:05:5
14 financial circumstances, we have always made sure that we 12:05:5
15 have maintained and preserved the collection and followed the 12:05:5
16 highest standards. 12:06:0

17 THE COURT: All right. The only thing left, then, 12:06:0
18 if you could file with the Court by July 15th the corporate 12:06:0
19 structure and any changes and also the status of the reserve 12:06:1
20 fund. If you want to file it earlier, you can. Just be 12:06:1
21 sure, Mr. Porter, as I said, gets a copy. Then also I'm 12:06:1
22 going to direct you to continue to file the periodic reports. 12:06:2
23 I think at this juncture you need to increase that. You're 12:06:4
24 filing them what, every three months now? 12:06:5

25 MR. McFARLAND: Yes, Your Honor. They have been 12:06:5

1 quarterly. 12:06:5

2 THE COURT: You have been filing them quarterly. I 12:06:5
3 think that we are going to have to increase that to six. So 12:06:5
4 your last one was June, so your next one will be due by 12:07:0
5 August 15th. 12:07:0

6 MR. McFARLAND: Absolutely, Your Honor. 12:07:0

7 THE COURT: In the meantime, you can always 12:07:1
8 obviously file a supplemental report if something else is 12:07:1
9 going on. 12:07:1

10 MR. McFARLAND: Exactly, Your Honor. I was going to 12:07:1
11 say more information, I know, is better than less, and in 12:07:2
12 that sense we will also keep the Court advised of significant 12:07:2
13 proceedings in the Middle District of Florida action, the 12:07:2
14 bankruptcy Chapter 11 action. 12:07:2

15 THE COURT: Please do, and in the meantime at 12:07:3
16 minimum file the reports now every two months, obviously with 12:07:3
17 a copy to Mr. Porter, and if at any point any party feels 12:07:3
18 they need a hearing before this Court, just please notify the 12:07:4
19 Court, and that includes you also, Mr. Porter. 12:07:4

20 MR. PORTER: Yes, Your Honor. 12:07:4

21 THE COURT: If NOAA feels that they need some advice 12:07:5
22 or some guidance from the Court or something's occurring that 12:07:5
23 needs to come before the Court, so please advise if you need 12:07:5
24 any further hearing. Otherwise, I will continue as I have, 12:08:0
25 reading your periodic reports and periodically having you 12:08:0

1 come to court. I would note that this hearing was scheduled 12:08:1
2 before your bankruptcy. 12:08:1

3 MR. McFARLAND: Yes. 12:08:1

4 THE COURT: It was just to catch-up. I felt like we 12:08:1
5 hadn't had a catch-up on the reports. 12:08:2

6 MR. PORTER: Your Honor, one point. In their 12:08:2
7 periodic report, the most recent one, they indicated that 12:08:2
8 they would be providing courtesy copies of the filings in the 12:08:2
9 bankruptcy court to this court. I don't know if the Court 12:08:3
10 needs all of the filings. I would appreciate, though, if 12:08:3
11 they would be providing us all the filings. 12:08:3

12 THE COURT: I would like all of the filings. You 12:08:3
13 don't have to do it necessarily in the report but I do want 12:08:4
14 copies of all of the filings. 12:08:4

15 MR. PORTER: That would be the same day, counsel. 12:08:4

16 That is fine. Thank you, Your Honor. 12:08:5

17 THE COURT: They can do the filings because then I 12:08:5
18 can also follow it on the docket sheet, and so forth. 12:08:5

19 All right. Is there anything else we need to take 12:08:5
20 up today? 12:09:0

21 MR. McFARLAND: Not from Titanic standpoint, Your 12:09:0
22 Honor. 12:09:0

23 MR. PORTER: No, Your Honor. 12:09:0

24 THE COURT: All right. Then the Court stands in 12:09:0
25 recess until 2:00. 12:09:0

(Hearing adjourned at 12:09 p.m.)

12:09:1

CERTIFICATION

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

X _____ /s/ _____ x

Jody A. Stewart

X _____ 6-21-2016 _____ x

Date

JODY A. STEWART, Official Court Reporter